CLERK'S COPY.

CERTIFICATE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 548

THE UNITED STATES OF AMERICA

vs.

MATTIE PUCKETT WORLEY, ADMINISTRATRIX OF THE ESTATE OF EMMET A. PUCKETT, DECEASED, AND MATTIE PUCKETT WORLEY, INTERVENER

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

FILED JANUARY 2, 1930

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1 In United States Circuit Court of Appeals, Eighth Circuit

November Term, 1929

No. 8558

UNITED STATES OF AMERICA, APPELLANT

vs.

MATTIE PUCKETT WORLEY, ADMINISTRATRIX OF THE ESTATE OF EMMET A. Puckett, deceased, and Mattie Puckett Worley, intervener, appellees

Appeal from the District Court of the United States for the District of Nebraska

---

Mr. James C. Kinsler, United States attorney; Mr. Geo. A. Keyser, assistant United States attorney; Mr. Philip M. Aitken, assistant United States attorney; Mr. Edson Smith, assistant United States attorney; Mr. Ambrose C. Epperson, assistant United States attorney; and Mr. F. H. Wagener, regional attorney, United States Veterans' Bureau, for appellant.

Mr. Clarence T. Spier and Mr. Charles Battelle, for appellees.

Before VAN VALKENBURGH and BOOTH, circuit judges, and DEWEY, district judge.

Statement of case

The United States Circuit Court of Appeals for the Eighth Circuit hereby certifies that a record on an appeal now pending before it discloses the following:

2 Emmet A. Puckett, deceased, was a duly enlisted soldier of the United States in the World War, having entered the service on April 2, 1917, as a private in Company A, 139th Infantry. He was discharged from the service March 18, 1918, by reason of physical disability for military service. He had a $10,000.00 term insurance contract under the provisions of the Act of October 6, 1917 (40 Stat. 398), not evidenced by written certificate or policy, the premiums upon which contract were paid from his monthly pay as a soldier until his discharge from military service, as aforesaid. The payments thus made were sufficient to keep said policy in force until April, 1918. After the soldier was discharged no further premiums were paid. While no written certificate was ever issued, receipts were given for payments taken out of the enlisted man's pay, the insurance granted being governed and controlled by the applicable statutes. It is conceded that, under the terms of the contract thus resulting, payments in the sum of $57.50 per month would be made to the beneficiary in the event of death, and to the assured in case of total and permanent disability,

3 during the term of such disability, until the full amount of

such term insurance should be paid. The mother of the soldier, intervener herein, was the designated beneficiary. At some time, the exact date not appearing, the soldier presented to the Veterans' Bureau a claim for total and permanent disability from date of discharge, at which time said insurance contract was in force. December 29, 1926, he was advised by the bureau that his claim for insurance benefits was rejected. The soldier died January 7, 1927. Pursuant to the provisions of section 19 of the World War veterans' act of 1924, the mother of the deceased, as administratrix, brought suit April 23, 1927, to recover, on the ground of total and permanent disability existing at time of discharge, insurance payments alleged to be due under said contract from March 18, 1918, the date of such discharge, to January 7, 1927, the date of the soldier's death. July 6, 1927, the mother of the deceased, in compliance with an order of court, made upon motion of the United States, filed her petition of intervention, in which, as beneficiary, she claimed any balance due under said insurance contract, in addition to the amount claimed in her suit as adminis-
4 tratrix. October 31, 1928, the jury returned a verdict in favor of the administratrix in the sum of six thousand and ninety-five dollars ($6,095.00) dollars, and for the intervener in the sum of three thousand nine hundred and five ($3,905.00) dollars. The judgment was entered accordingly on the same day. In neither the original petition nor petition in intervention was interest demanded; but at the trial and before the rendition of the verdict plaintiff and intervener in open court requested that the jury be instructed to include interest upon any amount that they might find due the plaintiff and intervener from the date said payments matured, and the court at that time orally reserved the matter of the allowance of the interest, the same to be determined in entering the judgment upon the verdict, should a verdict be rendered in favor of the plaintiff and intervener. No objection was made to the mere method of procedure adopted, and no objection is now made thereto. November 1, 1928, the plaintiff moved the court to allow her "interest at the rate of seven per cent per annum upon all unpaid payments of insurance from the date said several installments became due to October 31, 1928, and add such interest to the verdict rendered by the jury, in favor of the plaintiff in the above-entitled cause, and enter judgment therefor." The intervener filed motion to the same effect. December 14, 1928, counsel for plaintiff and intervener moved the court to allow an attorney's fee in accordance with the provisions of section 500 of the World War veterans' act as amended. December 28, 1928, the court entered a supplemental judgment, the material parts of which here follow:

"The court finds that the plaintiff as administratrix is entitled to have and recover interest at the rate of seven per cent per annum upon the insurance installments from the date they were due and that the first monthly installment was due April 1, 1918, and that

5 the amount of this interest which the plaintiff should recover up to October 31, 1928, is the sum of $2,655.99 and that the judgment heretofore entered in favor of the plaintiff shall draw interest from October 31, 1928, at seven per cent per annum.

"The court further finds that the intervener as beneficiary under said policy of insurance is entitled to have and recover interest upon the deferred payments due her from the date the same matured and until paid at the rate of seven per cent per annum and that the first installment was due her February 1, 1927, and that the amount of interest so due the intervener upon said installments of insurance due to October 31, 1928, is the sum of $84.36.

"The court further finds that the intervener recovered a judgment as beneficiary under said insurance policy in the sum of three thousand nine hundred five ($3,905.00) dollars and that of this amount there was, on October 31, 1928, the date of the rendition of the judgment herein, past due and owing to the intervener, installments in the sum of $1,265.00, and that she is entitled to to interest upon this amount at seven per cent per annum until paid, and that the balance of said three thousand nine hundred five ($3,905.00) dollars, to wit: $2,640.00, should be paid to the intervener at the rate of $57.50 per month commencing November 1, 1928, with interest at the rate of seven per cent upon each of said installments as long as the same remains past due and unpaid.

"The court further finds that a fee of 10 per cent of the amount recovered should be allowed to Clarence T. Spier and Charles Battelle as attorneys for the plaintiff and intervener in the above entitled cause and they are hereby allowed a fee of $1,274.03 to be paid as said payments are made to the plaintiff and intervener. The court further finds that the entry of the judgment rendered in the above entitled cause on October 31, 1928, shall stand and that this entry shall be supplemental thereto and be and become a part of said judgment.

"It is therefore ordered and adjudged that the plaintiff have and recover of and from the United States of America, in addition to the judgment heretofore rendered on the 31st day of October, 1928, in the above entitled cause, the sum of $2,655.99, being a total judgment in favor of the plaintiff of $8,750.99 with interest thereon at the rate of seven per cent per annum from October 31, 1928, and that the intervener have and recover, in addition to the judgment heretofore rendered on the 31st day of October, 1928, in the above entitled cause, the sum of $84.36, and that out of the total amount due the intervener she is entitled to have and recover payment at this time of $1,349.36 with interest at seven per cent per annum from October 31, 1928, and the balance of said judgment shall be paid in installments at the rate of $57.50 per month, the first payment to be made on the first day of November, 1928, and that said deferred payments shall bear interest at the rate of seven per cent per annum
6 from the date the same became due subsequent to October 31,

1928, and that the plaintiff and intervener have and recover their costs, for all of which execution is hereby awarded, to all of which findings and rulings and judgment the defendant excepts."

The contention of the Government is that—

"The court erred in rendering the supplementary judgment of date December 28, 1928, and then awarding to the appellees the following:

"a. Judgment for the amounts of insurance installments maturing after the action was instituted.

"b. Costs.

"c. Interest on the installments awarded to the appellees."

It is not disputed that in the absence of stipulation to the contrary, or of a statute allowing it, interest can not be recovered against the United States upon unpaid accounts or claims. (Seaboard Air Line Ry. vs. United States, 261 U. S. 299; Boston Sand Co. vs. United States, 278 U. S. 41, 47.) But appellees place reliance upon the language employed in Standard Oil Co. vs. United States, 267 U. S. 76, in a suit upon a marine insurance policy, to-wit:

"When the United States went into the insurance business, issued policies in familiar form, and provided that in case of disagreement it might be sued, it must be assumed to have accepted the ordinary incidents in such business. The policies promised that claims would be paid within thirty days after complete proofs of interest and loss had been filed with the Bureau of War Risk Insurance."

7 The Government contends that this pronouncement is limited to marine insurance of the kind provided in the act of September 2, 1914 (38 Stat. 711, 712), and has no application to the term insurance contract provided by act of October 6, 1917 (40 Stat. 398), and appeals to the following language of the opinion in White vs. United States, et al, 270 U. S. 175, 180:

"The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right to it and the relation of the Government to them if not paternal was at least avuncular. It was a relation of benevolence established by the Government at considerable cost to itself for the soldier's good."

The interior Federal courts are not in harmony as to the relationship of the United States to insurance contracts such as that here involved, nor as to the allowance of interest, the awarding of costs in such cases, and the authority to render judgment against the United States upon installments not yet due and payable under the terms of such insurance contracts. For the divergent views entertained, reference is made, among others, to the following cases:

Birmingham vs. United States, 4 Fed. (2d) 508, 509; United States vs. Lyke, 19 Fed. (2d) 876; United States vs. Napoleon et al, 296 Fed. 811; Jackson vs. United States, 24 Fed. (2d) 981; Gianakouras vs. United States, 33 Fed. (2d) 936; Jackson vs. United States, 34 Fed (2d) 241.

8 *Questions certified*

This court, being in doubt, desires the instruction of the Supreme Court upon the following questions, a decision of which is deemed indispensable to a determination of this case now before it, and to a proper discharge of its duties herein:

Question 1.—Upon the facts above stated does the United States, as matter of law, stand in the position of one who has gone into the business of insurance, and must, therefore, be assumed to have accepted the ordinary incidents of suits in such business?

Question 2.—In case of a finding in favor of plaintiff and intervener, may judgment be entered against the United States for the amounts of insurance installments maturing after the action was instituted?

Question 3.—In case of a finding and judgment in favor of the plaintiff and intervener, is interest allowable against the United States upon the monthly installments from the date they are found to be due?

9 *Question 4.*—In case of a finding and judgment in favor of plaintiff and intervener, may costs be awarded generally against the United States, upon condition that they be paid from accumulated funds in the hands of the Veterans' Bureau, if any, available for that purpose?

ARBA S. VANVALKENBURGH,
United States Circuit Judge.
WILBUR F. BOOTH,
United States Circuit Judge.
CHAS. A. DEWEY,
United States District Judge.

(The judges who sat in the Circuit Court of Appeals on the hearing of the case.)

10 Clerk's certificate to foregoing omitted in printing.

U. S. GOVERNMENT PRINTING OFFICE: 1930

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CHARLES ELMORE

FILE COPY

No. 548

In the Supreme Court of the United States

OCTOBER TERM, 1929

THE UNITED STATES OF AMERICA

v.

MATTIE PUCKETT WORLEY, ADMINISTRATRIX OF THE ESTATE OF EMMET A. PUCKETT, DECEASED, AND MATTIE PUCKETT WORLEY, INTERVENER

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION TO ADVANCE

In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 548

THE UNITED STATES OF AMERICA

v.

MATTIE PUCKETT WORLEY, ADMINISTRATRIX OF THE estate of Emmet A. Puckett, deceased, and Mattie Puckett Worley, intervener

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION TO ADVANCE

The Solicitor General, on behalf of the United States, moves to advance this cause for early hearing during the present term.

This action was brought on a contract of war-risk insurance in the District Court of the United States for the District of Nebraska, and a judgment was entered against the United States. The District Court awarded interest, costs, and future installments of insurance in favor of the plaintiff. The Government took an appeal to the United States Circuit Court of Appeals for the Eighth

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Circuit and that court has certified the following questions to this Court:

> Upon the facts above stated, does the United States, as matter of law, stand in the position of one who has gone into the business of insurance, and must, therefore, be assumed to have accepted the ordinary incidents of suits in such business?
>
> In case of a finding in favor of plaintiff and intervener, may judgment be entered against the United States for the amounts of insurance installments maturing after the action was instituted?
>
> In case of a finding and judgment in favor of the plaintiff and intervener, is interest allowable against the United States upon the monthly installments from the date they are found to be due?
>
> In case of a finding and judgment in favor of plaintiff and intervener, may costs be awarded generally against the United States, upon condition that they be paid from accumulated funds in the hands of the Veterans' Bureau, if any, available for that purpose?

There are now pending in the various United States District Courts approximately 4,500 war-risk insurance cases and the questions of the right to award future installments and interest and costs are involved in most of them. The District Courts are not uniform in their decisions on these questions and the Government now has on appeal in the Circuit Courts of Appeals cases involving one or more of these points.

On December 2, 1929, this Court granted a petition for a writ of certiorari in the case of *Charles Jackson* v. *United States,* No. 463, which involves the sole question of the right to allow interest against the United States in a judgment entered on a war-risk insurance contract; in that case the United States Circuit Court of Appeals for the Tenth Circuit held that interest could not be awarded against the Government. That question is included in the above questions which have been certified by the Circuit Court of Appeals for the Eighth Circuit and this Court may deem it advisable to advance also the *Jackson case.*

The above-mentioned questions are of great importance in this class of litigation, and it is believed to be in the public interest that they be finally settled for the guidance of the lower courts in properly disposing of the many cases pending on their dockets. In order that the Circuit Courts of Appeals may not be congested with numerous appeals on these points an early hearing of this case is requested.

Counsel for the administratrix and intervener advise that they concur in this motion.

Respectfully submitted.

CHARLES E. HUGHES, Jr.,
Solicitor General.

JANUARY, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930

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FILE COPY

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BRIEF FOR THE UNITED STATES

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ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The District Court rendered no opinion.

JURISDICTION

The case is here on the certificate of the United States Circuit Court of Appeals for the Eighth Circuit, under Section 239 of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS CERTIFIED

The questions presented arise out of an action on a policy of war risk life insurance, and are stated in the certificate as follows:

> 1. Upon the facts stated [in the certificate] does the United States, as a matter of law, stand in the position of one who has gone into the business of insurance, and must, therefore, be assumed to have accepted the ordinary incidents of suits in such business?
>
> 2. In case of a finding in favor of plaintiff and intervener, may judgment be entered against the United States for the amounts of insurance installments maturing after the action was instituted?
>
> 3. In case of a finding and judgment in favor of the plaintiff and intervener, is interest allowable against the United States upon the monthly installments from the date they are found to be due?
>
> 4. In case of a finding and judgment in favor of plaintiff and intervener, may costs be awarded generally against the United States, upon condition that they be paid from accumulated funds in the hands of the Veterans' Bureau, if any, available for that purpose?

STATUTES INVOLVED

The statutes involved are referred to, and the most recent one is copied, in the Appendix, pp. 27–29, *infra*.

STATEMENT

The facts stated in the certificate (R. 1–4) may be epitomized as follows:

The deceased insured, Emmet A. Puckett, enlisted in the Army on April 2, 1917, and was discharged on March 18, 1918. While in the service he was granted a war risk insurance contract (not evidenced by a written policy) in the sum of $10,000, under the authority of the War Risk Insurance Act of October 6, 1917 (U. S. C. Title 38, Sections 421, 511). The insured was discharged on March 18, 1918, and no premiums on the policy were thereafter paid. (R. 1.) The contract of insurance provided for the payment of $57.50 per month in the event of death or total permanent disability.

At some time, the exact date of which does not appear, the insured presented to the Veterans' Bureau a claim for permanent and total disability from the date of his discharge. At the date of his discharge, the insurance contract was in force. The claim was rejected. He died January 7, 1927. (R. 2.) Pursuant to the provisions of Section 19 of the World War Veterans' Act (U. S. C. Title 38, Sec. 445), the mother of the insured, as administratrix of his estate, brought an action against the United States in the District Court of the United States for the District of Nebraska to recover on the policy on the ground of permanent and total disability of the insured from date of discharge. As the designated beneficiary in the policy, she later intervened to recover the installments of insurance maturing after the death of the insured. (R. 2.)

The jury returned a verdict in favor of the mother as administratrix for $6,095, the aggregate amount of monthly payments due on account of disability up to the date of the death of the insured, and in favor of her as beneficiary designated in the policy for $3,905 on account of the death of the insured. The District Court entered judgment for these amounts and later entered a supplemental judgment which provided that as beneficiary she was then entitled to recover payment of $1,265, as the total amount of all installments on account of death falling due up to the time of the original judgment, including those which matured after the action was brought; that the balance of the $3,905, i. e., $2,640, should be paid her thereafter at the rate of $57.50 per month; that she recover interest at the rate of seven per centum per annum on all installments, both for disability and for death, from the respective dates when they fell due, with interest on the judgment at the same rate, and costs. (R. 3.)

The rate of interest allowed is apparently based on the rate on judgments provided by the state statute. See Sec. 2836, Comp. Stat. of Nebraska, 1922.

The Government appealed to the Circuit Court of Appeals for the Eighth Circuit, which certified the above questions to this Court. (R. 5.)

SUMMARY OF ARGUMENT

I. It is our view that the first question certified, relating to whether the United States stands in the position of one who has gone into the insurance

business and must be assumed to have accepted the ordinary incidents of suits in such business, does not present a definite question of law which this Court may be required to answer. The question presents an argumentative consideration upon the question whether interest is allowable. If it is answered, we submit that the opinion in *White* v. *United States,* 270 U. S. 175, 180, requires it to be answered in the negative.

II. Future installments can not be awarded against the United States under a policy of war risk insurance. This is an action at law for a money judgment, and the ordinary rule that the judgment can include only what the plaintiff was entitled to at the commencement of the action should apply. Furthermore, in the event of the death of the beneficiary, the balance of the proceeds of the policy must be paid in accordance with the provisions of the World War Veterans' Act, and would pass to such other persons as may be entitled thereto under the provisions of the Act.

III. In *Boston Sand & Gravel Co.* v. *United States,* 278 U. S. 41, 47, this Court held that interest can not be awarded against the United States except where it assumes that liability by contract or it is so provided by express words of the statute, or where it must pay it as part of just compensation. Neither the statute nor contract allows it, and "just compensation" is not involved. The language of this Court in *Standard Oil Company* v. *United States,* 267 U. S. 76, holding that interest was allow-

able against the United States on the ground that when the United States went into the insurance business it must be assumed to have accepted the ordinary incidents of suits in such business, which case was based on a policy of marine insurance issued by the Government on a steamship and her freight and advances against war risks, pursuant to the Act of September 2, 1914, c. 293, 38 Stat. 711, is not controlling in the case under consideration, which was brought to recover on a policy of war risk life insurance issued by the Government under authority of the War Risk Life Insurance Act of October 6, 1917. Marine insurance under the 1914 Act and life insurance under the 1917 Act are distinct and controlled by different principles, as shown by the ruling of this Court in *White* v. *United States,* 270 U. S. 175, 180.

Our contentions are supported by decisions of the Circuit Courts of Appeals for the Ninth and Tenth Circuits. There is no decision of any Circuit Court of Appeals contrary to them. The decision of the Circuit Court of Appeals for the Sixth Circuit in *United States* v. *Woolen,* 25 F. (2d) 673, allowed interest at the rate of five per centum, compounded annually, and this was based solely upon a misconstruction of Section 309 of the World War Veterans' Act, as amended. The Veterans' Bureau has never paid interest on accrued installments, and its construction of the Act—impliedly recognized by Congress by reenacting substantially the same language of the original Act—is entitled to weight.

IV. It is the settled general rule that costs can not be awarded against the United States in the absence of statutory authority therefor. The Acts of Congress relating to war risk life insurance make no provision for costs, and the Government has never paid costs in litigation under these Acts. Congress has not appropriated any fund specifically for the payment of costs.

ARGUMENT

I

THE UNITED STATES, AS MATTER OF LAW, DOES NOT STAND IN THE POSITION OF ONE WHO HAS GONE INTO THE BUSINESS OF INSURANCE, AND MAY NOT, THEREFORE, BE ASSUMED TO HAVE ACCEPTED THE ORDINARY INCIDENTS OF SUITS IN SUCH BUSINESS

The first question certified reads:

> Upon the facts above stated, does the United States, as matter of law, stand in the position of one who has gone into the business of insurance and must, therefore, be assumed to have accepted the ordinary incidents of suits in such business?

It is our view that the above question does not present any definite and clear-cut question of law such as this Court may be required to answer on certificate. The facts stated in the certificate do not necessitate an answer to the question thus broadly phrased. The specific questions presented by the certificate are those relating to the allowability of amounts of insurance installments ma-

turing after the action was instituted and of interest and costs, which are covered by the second, third, and fourth questions propounded.

Question 1 seems to present simply an argumentative consideration bearing particularly upon the question of the allowability of interest. Its phraseology clearly refers to the language of this Court in the case of *Standard Oil Company* v. *United States,* 267 U. S. 76, 79, which is relied upon by the plaintiff in support of such an allowance, and will be dealt with in our argument upon the interest question. We submit that, upon the facts stated in the certificate, the inquiry propounded in Question 1 is significant only in relation to that question and that, separately considered, it is abstract and hypothetical and need not be answered. See *United States* v. *Mayer,* 235 U. S. 55, 66–67, in which the authorities are collected.

If this Court should consider that Question 1 ought to be separately answered, we submit that the opinion in *White* v. *United States,* 270 U. S. 175, 180, requires that it be answered in the negative. This case will also be discussed in connection with our treatment of the question of interest. In addition to the *White case,* the following decisions of the lower Federal courts have held that war risk life insurance is a special statutory kind of insurance and that the contracts issued by the Government are, therefore, not to be construed according to the principles of law applicable to policies of insurance issued by commercial companies. *Cassa-*

rello v. *United States* (C. C. A. 3d), 279 Fed. 396; *Helmholz* v. *Horst* (C. C. A. 6th), 294 Fed. 417; *Birmingham* v. *United States* (C. C. A. 8th), 4 F. (2d) 508; *Richmond* v. *United States* (C. C. A. 5th), 6 F. (2d) 143; *Bean* v. *United States* (D. C. Kan.), 7 F. (2d) 393; *Tomlinson* v. *United States* (D. C. Mont.), 18 F. (2d) 795.

II

IN CASE OF A FINDING IN FAVOR OF PLAINTIFF AND INTERVENER, JUDGMENT MAY NOT BE ENTERED AGAINST THE UNITED STATES FOR THE AMOUNTS OF INSURANCE INSTALLMENTS MATURING AFTER THE ACTION WAS INSTITUTED

A suit on a contract of war risk life insurance is authorized by Section 19 of the World War Veterans' Act (U. S. C., Title 38, Sec. 445), (*infra,* pp. 27–29) and is an action at law for the recovery of a money judgment. We submit therefore that the court can award no more than the sum of the installments accrued at the date of the institution of the action. A $10,000 policy of war risk insurance is payable, with certain exceptions not here material, at the rate of $57.50 per month during the period of total permanent disability or in case of death at the same rate to the beneficiary until the full amount is paid.

There would seem to be no reason for departing from the ordinary rule that in an action at law on a contract the plaintiff can recover only such installments as were due at the time of bringing the

action. See *Hamlin, Hale & Co.* v. *Race,* 78 Ill. 422; *Peurrung* v. *Carter-Crume Co.,* 110 Fed. 107, 109, where authorities are collected. (An intimation that plaintiff by supplemental petition may recover all installments which have fallen due between the time of the filing of the original petition and the judgment is found in the opinion of the Circuit Court of Appeals for the Sixth Circuit in this case. *Carter-Crume Co.* v. *Peurrung,* 99 Fed. 888, 890.) But the question whether installments maturing between the date of commencing the action and the date of judgment may be recovered is of no practical importance, inasmuch as the Veterans' Bureau would, of course, pay such installments if the right to any recovery is established by a judgment.

A substantial question is raised by the action of the District Court in entering judgment for the plaintiff for installments becoming due after the date of the judgment. If the recovery is on account of death of the insured, there is always the possibility that the plaintiff beneficiary may die before the time when the last installment becomes due. Section 14 of the Act of March 4, 1925, c. 553, 43 Stat. 1302, 1310 (U. S. C., Title 38, Section 514), provides—

> * * * if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there

> shall be paid to the estate of the insured the present value of the monthly installments thereafter payable * * *.

A judgment such as that rendered in the instant case might result in compelling the Government to make a double payment, i. e., to the estate of the beneficiary under the judgment and to the estate of the insured under the above provisions of the statute. We consequently submit that no judgment should include installments due after the date of the judgment.

In *United States* v. *Napoleon* (C. C. A. 5th), 296 Fed. 811, 815, an action by beneficiaries under a policy of war risk insurance for payments on account of the death of the insured, the court said:

> The judgment signed in petitioners' favor for $10,000, to be paid in 240 equal monthly installments, is erroneous as to amount. This is an action at law which is permissible under the Tucker Act. See section 4; *Chase* v. *United States,* 155 U. S. 489, 499, 15 Sup. Ct. 174, 39 L. Ed. 234. In a suit at law for the recovery of money due in installments under a single contract, judgment may be had for such installments only as are due when suit is brought. 1 C. J. 1112, 1148; *Carter-Crume Co.* v. *Peurrung,* 99 Fed. 888, 40 C. C. A. 150, affirming (C. C.) 110 Fed. 107. Should these petitioners die before the accrual of all the installments, the right to recover then would, under the law, pass to others.

The United States Circuit Court of Appeals for the Tenth Circuit in *United States* v. *Jackson*, 34 F. (2d) 241, and the United States Circuit Court of Appeals for the Ninth Circuit in *United States* v. *Lyke*, 19 F. (2d) 876, followed the same rule in actions brought by the insured himself claiming permanent and total disability.

III

IN CASE OF A FINDING AND JUDGMENT IN FAVOR OF PLAINTIFF AND INTERVENER, INTEREST IS NOT ALLOWABLE AGAINST THE UNITED STATES UPON THE MONTHLY INSTALLMENTS FROM THE DATE THEY ARE FOUND TO BE DUE, NOR UPON THE JUDGMENT FROM THE DATE OF ITS ENTRY UNTIL PAID

In *Boston Sand and Gravel Co.* v. *United States*, 278 U. S. 41, this Court said (p. 47):

> We start with the rule that the United States is not liable to interest except where it assumes the liability by contract or by the express words of a statute, or must pay it as part of the just compensation required by the Constitution. *Seaboard Air Line Ry. Co.* v. *United States*, 261 U. S. 299, 304, 306.

The following are cases in which the rule is illustrated or applied: *United States* v. *Sherman*, 98 U. S. 565; *Tillson* v. *United States*, 100 U. S. 43; *Harvey* v. *United States*, 113 U. S. 243; *United States ex rel. Angarica* v. *Bayard*, 127 U. S. 251; *Cherokee Nation* v. *United States*, 270 U. S. 476; *United States* v. *Minnesota Mut. Invest. Co.*, 271 U. S. 212; *Henkels* v. *Sutherland*, 271 U. S. 298;

United States v. *Commonwealth & Dominion Line*, 278 U. S. 427.

The instant case would not seem to come within any of the exceptions to the above rule which were enunciated in *United States* v. *McKee*, 91 U. S. 442; *The Nuestra Senora de Regla*, 108 U. S. 92; *United States* v. *New York*, 160 U. S. 598; *The Paquete Habana*, 189 U. S. 453; *Porto Rico* v. *Ramos*, 232 U. S. 627; *United States* v. *The Thekla*, 266 U. S. 328; or *Phelps* v. *United States*, 274 U. S. 341.

The Acts of Congress relating to war risk life insurance and the contract of insurance do not provide for any interest against the United States. (See pp. 18, 27–29, *infra*.) Of course "just compensation" is not involved. The case, therefore, falls squarely within the rule announced by this Court, quoted above, unless the Government is liable for interest on a contract of war risk life insurance by reason of the rule enunciated in *Standard Oil Company* v. *United States*, 267 U. S. 76. In that case a libel was filed against the United States on a policy of marine insurance issued by the Government on a steamship and her freight and advances against war risks, pursuant to the Act of September 2, 1914, c. 293, 38 Stat. 711. In allowing interest against the Government in that case, this Court said (page 79):

> When the United States went into the insurance business, issued policies in familiar form and provided that in case of disagree-

> ment it might be sued, it must be assumed to have accepted the ordinary incidents of suits in such business.

The Act of September 2, 1914, indicates that it was contemplated that the marine insurance business of the Government should be conducted by the Government upon principles similar to those adopted by commercial companies. Thus the Bureau of War Risk Insurance, which was created by the Act, was authorized "to adopt and publish a form of war risk policy, and to fix reasonable rates of premium for the insurance of American vessels," etc. (Section 3), and the Secretary of the Treasury was authorized " to establish an advisory board, to consist of three members skilled in the practices of war risk insurance, for the purpose of assisting the Bureau of War Risk Insurance in fixing rates of premium and in adjustment of claims for losses, and generally in carrying out the purposes of this Act" (Section 5). As a matter of fact, the operations of this business resulted in a net profit to the Government of over $17,000,000. Annual Report of the Director, United States Veterans' Bureau, 1923, p. 675.

In an entirely different category is war risk life insurance issued by the Government pursuant to the provisions of the War Risk Life Insurance Act of October 6, 1917, c. 105, Sec. 400, 40 Stat. 398, 409. This is shown by the following language of this Court in the case of *White* v. *United States,* 270 U. S. 175, 180:

> The certificate of insurance provided in terms that it should be "subject in all respects to the provisions of such Act [of 1917] * * *." The insurance was a contract, to be sure, for which a premium was paid, but it was not one entered into by the United States for gain. All soldiers were given a right to it and the relation of the Government to them if not paternal was at least avuncular. It was a relation of benevolence established by the Government at considerable cost to itself for the soldier's good.

Following the principle announced by this Court in the *White case,* the courts have held generally that war risk life insurance is a special statutory kind of insurance and that contracts issued by the Government therefor are not to be construed according to the principles of law applicable to policies of insurance issued by commercial companies. See authorities cited on p. 9, *supra.*

In *United States* v. *Lyke,* 19 F. (2d) 876, 877, *supra,* the Circuit Court of Appeals for the Ninth Circuit said:

> We are of the opinion that interest was not allowable. It is a settled rule that, in the absence of a stipulation to pay interest or a statute allowing it, none can be recovered against the United States upon unpaid accounts or claims. *United States* v. *Rogers,* 255 U. S. 163, 169, 41 S. Ct. 281, 65 L. Ed. 566; *United States* v. *North American Transportation & Trading Co.,* 253 U. S. 330, 40 S. Ct. 518, 64 L. Ed. 935.

> The defendant in error cites *Standard Oil Co.* v. *United States,* 267 U. S. 76, 45 S. Ct. 211, 69 L. Ed. 519, as authorizing a judgment for interest. Interest was there allowed on a marine insurance policy, on the ground that the United States had gone into the insurance business and had accepted the ordinary incidents of suits in such cases. The reasoning on which that conclusion was reached does not apply to the present case. The war risk insurance contract for the soldier is not a business contract. It partakes of the nature of both insurance and pension. It is a "relation of benevolence, established by the government at considerable cost to itself, for the soldier's good." *White* v. *United States,* 270 U. S. 175, 46 S. Ct. 274, 70 L. Ed. 530; *Bean* v. *United States* (D. C.) 7 F. (2d) 393, 396.
>
> We find no ground for holding that it was the intention of Congress, in providing for such insurance, to abrogate the established rule against the allowance of interest on claims against the United States.

The Circuit Court of Appeals for the Tenth Circuit in the *United States* v. *Jackson,* 34 F. (2d) 241, *supra* (certiorari granted, Dec. 2, 1929; No. 463, Oct. Term, 1929), declined to allow interest against the United States and said (pp. 242–243):

> Neither the statute nor the contract of war risk insurance makes express provision for the payment of interest. If the United States is liable for interest, it must be because of an implied provision of the contract.

In the case of *Standard Oil Co. of N. J.* v. *United States*, 267 U. S. 76, 45 S. Ct. 211, 69 L. Ed. 519, which was an action upon a policy of marine insurance issued under the provisions of the Act of September 2, 1914 (38 Stat. 711), the court held that, when the United States went into the business of insurance, issued policies in familiar form, and provided that in case of disagreement it might be sued, it must be assumed to have accepted the ordinary incidents of suits in such business, including the payment of interest. This case was relied upon by the trial court as authority for awarding interest in the instant case.

It is true that Congress, by the same statute, created the Bureau of War Risk Insurance and authorized the government to issue policies of marine insurance and policies of life and permanent disability insurance. However, the acts of Congress disclose that the nature and purposes of the two classes of insurance differed in material particulars. Marine insurance was first authorized by the Act of September 2, 1914 (38 Stat. 711). Section 2 thereof reads as follows:

"That the said Bureau of War Risk Insurance, subject to the general direction of the Secretary of the Treasury, shall, as soon as practicable, make provisions for the insurance by the United States of American vessels, their freight and passage moneys, and cargoes shipped or to be shipped therein, against loss or damage by the risks of war, whenever it shall appear to the Secretary

that American vessels, shippers, or importers in American vessels are unable in any trade to secure adequate war risk insurance on reasonable terms."

The provisions for life and disability insurance were provided by the amendment of October 6, 1917 (40 Stat. 409).

Section 400 of article 4 of the Act of October 6, 1917, reads as follows:

"That in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater protection for themselves and their dependents than is provided in Article III, the United States, upon application to the bureau and without medical examination, shall grant insurance against the death or total permanent disability of any such person in any multiple of $500, and not less than $1,000 or more than $10,000, upon the payment of the premiums as hereinafter provided."

In the Standard Oil Case the Supreme Court held that the United States had gone into the business of marine insurance and issued marine insurance policies in the usual form of such policies. On the contrary, in issuing life and disability insurance policies, under the provisions of the amendment of October 6, 1917, the United States did not go into the life insurance business and did not issue life insurance policies in the usual form. Furthermore, under such policies the

payments to be made in case of death or permanent disability were not indemnity in their entirety, but were partly in the nature of pension.

In the case of *Birmingham* v. *United States* (C. C. A.), 4 F. (2d) 508, 509, the Court said:

"The government in devising and putting in effect its plan of war risk insurance did not enter the field of business in the accepted sense for commercial purposes and pecuniary gain, and therefore does not stand in the same relation to the insured as do ordinary insurance companies. It can be held only to the extent that it has expressly consented to be held upon contracts of this nature."

* * * * *

Since the government, by issuing its policies of life and permanent disability insurance under the provisions of the amendment of October 6, 1917, did not go into the life and disability insurance business, and since contracts of insurance issued thereunder were not the same as ordinary insurance contracts issued by private life insurance companies, but provided for payments partially in the nature of insurance and partially in the nature of pension, we do not think it follows that by issuing such contracts and consenting to be sued thereon the United States accepted the ordinary incidents of suits upon ordinary contracts of life insurance, including liability for interest. It follows that the contract contained no implied promise to pay

interest. It is therefore our conclusion that the court erred in awarding interest.

The Act of October 6, 1917, was the original statute granting war risk life insurance by the United States, and it provided for those in the *military* service. The Act of June 12, 1917, c. 26, 40 Stat. 102, amending and re-enacting the Marine Insurance Act of September 2, 1914, provided in Sections 2, 5, and 6 that provision should be made by the Secretary of the Treasury for insuring "the masters, officers, and crews" of American merchant vessels against loss of life or personal injury by the risks of war (Sec. 2) and that—

> the owner of every American merchant vessel engaged in such trade shall insure the master, officers, and crew of such vessel against loss of life or personal injury from war risks. (Sec. 5.)

If the owner failed to carry such insurance, the Secretary of the Treasury was authorized—

> to effect such insurance with the Bureau of War Risk Insurance at the *expense of the owner of such vessel,* and the latter shall be liable for such expense and, in addition, to a penalty of not exceeding $1,000. (Sec. 6, p. 104.) (Italics ours.)

As shown by the legislative history of the Act, one of the main purposes of requiring the owners of vessels to carry that insurance, *at their expense,* was to encourage American shipping. (Senate Report 33 and House Report 62, Vol. 1, 65th Cong.,

1st Sess.) That insurance is vastly different from the life insurance granted those in the military service at enormous expense to the Government, to provide "protection for themselves and their dependents." (Sec. 400, *supra*, p. 18.)

The only war risk life insurance case in which a Circuit Court of Appeals allowed interest against the United States is *United States* v. *Woolen*, 25 F. (2d) 673. There the Circuit Court of Appeals for the Sixth Circuit allowed interest at the rate of 5 per centum compounded annually, solely because of the following provisions of Section 309 of the World War Veterans' Act, as amended by the Act of July 2, 1926, c. 723, Sec. 18, 44 Stat. 790, 800 (U. S. C. App. Title 38, Sec. 516b):

> Where any person allowed his insurance to lapse and died after February 24, 1919, and prior to collecting the $60 bonus provided by the Act of February 24, 1919 (Fortieth Statutes at Large, page 1151), then and in that event his insurance shall not be considered as lapsed during such period as said uncollected bonus would, if applied to the payment of premiums when due, equal or exceed the same, and the United States Veterans' Bureau is hereby authorized and directed to pay to his beneficiaries under said policy the amount of said insurance, less the premiums and interest thereon at 5 per centum per annum, compounded annually, in installments, as provided by law.

We submit that that provision for compound interest at the rate of 5 per centum obviously directs its addition to the amount of the defaulted premiums and does not contemplate that the beneficiary shall receive interest at 5 per centum per annum compounded annually on the installments of the insurance from the date they would have been payable if the insurance had not lapsed. Similar provisions occur in Sections 304, 305, and 306 of the World War Veterans' Act of 1924. Sections 304 and 306 contain language which is impossible of any construction other than that the interest at the rate of five per centum per annum compounded annually is to be paid by the veterans on the back monthly premiums; and it is inconceivable that Congress intended by Section 309 to relieve the insured of the payment of interest on his premiums and also to provide for the payment of interest to him.

In the *Woolen case* the Government filed a petition for certiorari which was granted, 278 U. S. 589, and before the case was reached the parties entered into a stipulation eliminating interest; the judgments of the two lower courts were vacated, and the case, on motion of the Solicitor General, was remanded to the District Court for the entry of a judgment against the Government without interest or costs, 278 U. S. 665.

The consistent practice of the Veterans' Bureau has been not to pay interest on accrued installments under war risk life insurance policies. The sections of the statutes authorizing the issuance of war risk life insurance and conferring

jurisdiction on the District Courts to hear and determine controversies arising upon claims under contracts of war risk insurance contain no provision for the allowance of interest in any judgment against the United States and nowhere in the war risk insurance legislation is any authority conferred for its allowance against the Government. (See pp. 27–28, *infra.*) Complete policies were never issued for term insurance, but the terms and conditions of such insurance were provided by Bulletin No. 1, promulgated by the Director of the Bureau of War Risk Insurance under date of October 15, 1917. The terms and conditions of the insurance there published contain no mention of interest and no language giving any indication that interest was to be paid under any circumstances. The policies of Government life insurance, to which by law all term insurance later had to be converted, make no provision for the payment of interest, but do contain the following:

> Upon due proof of the death of the insured while this policy is in force, the monthly installments, without interest, which have accrued since the death of the insured, * * * shall be paid to the beneficiary designated, * * *.

The first Act was passed in 1917, Section 400 of which authorized the issuance of this insurance and Section 405 of which made provision for action against the Government. Substantially the same provisions were carried into the World War Vet-

erans' Act of June 7, 1924, as Sections 19 and 300, respectively, and into the Act of March 4, 1925, c. 553, Secs. 2, 12, 43 Stat. 1302, 1308. The interpretation of the Veterans' Bureau has thus been impliedly recognized and approved by Congress, and is entitled to weight. *Heiner* v. *Colonial Trust Co.*, 275 U. S. 232, 235; *National Lead Co.* v. *United States*, 252 U. S. 140, 146.

(The only departure from the consistent practice which we know was in the case of *Loveland* v. *United States*, 18 F. (2d) 585, in which, owing to the fact that the stipulation waiving jury trial was not in writing, the Government was obliged to confess error when the claimant filed a petition for certiorari to review the decision of the Circuit Court of Appeals for the Third Circuit, 25 F. (2d) 447, which reversed the judgment of the District Court in favor of the claimant. 278 U. S. 665.)

IV

IN CASE OF A FINDING AND JUDGMENT IN FAVOR OF PLAINTIFF AND INTERVENER, COSTS MAY NOT BE AWARDED AGAINST THE UNITED STATES; AND CONGRESS HAS NOT APPROPRIATED ANY FUND SPECIFICALLY FOR THE PAYMENT OF COSTS

The general rule is that costs can not be awarded against the United States in the absence of a statute specifically authorizing same. The Acts of Congress pertaining to war-risk life insurance contain no provision whatever permitting costs to be awarded against the Government.

In *United States* v. *Chemical Foundation*, 272 U. S. 1, 20, this Court said:

> The general rule is that, in the absence of a statute directly authorizing it, courts will not give judgment against the United States for costs or expenses. *United States* v. *Hooe,* 3 Cranch 73, 91, 92; *Shewan and Sons* v. *United States,* 267 U. S. 86; *United States* v. *Davis,* 54 Fed. 147, 152, *et seq.*

In judgments entered under contracts of war risk insurance there is no reason for making an exception to the general rule as above stated by this Court. The Circuit Court of Appeals for the Ninth Circuit held in *United States* v. *Lyke,* 19 F. (2d) 876, 878, *supra,* that costs can not be taxed against the United States in a judgment on a contract of war risk life insurance. We know of no decision of any court to the contrary, except that of the District Court in the instant case.

The Government has never paid costs in litigation on contracts of war risk life insurance.

The Acts appropriating money for war risk life insurance make no mention of costs. The last appropriation for the Veterans' Bureau is contained in the Act of March 4, 1929, c. 707, 45 Stat. 1623, 1628, and is in the following language:

> UNITED STATES VETERANS' BUREAU
>
> Military and naval insurance: The sum of $7,500,000 of the unexpended balance of the appropriation "Military and naval compensation, Veterans' Bureau, 1928 and prior years," and $1,000,000 of the unexpended balance of the appropriation "Salaries and expenses, Veterans' Bureau, 1928," are

hereby reappropriated and made available for the purposes of the appropriation "Military and naval insurance, Veterans' Bureau, 1929 and prior years."

As no costs had ever been paid, the amount estimated and appropriated contained no allowance for costs.

CONCLUSION

It is respectfully submitted that Questions 2, 3, and 4, should be answered in the negative, and if the Court should deem it proper and necessary to answer Question 1, it should likewise be answered in the negative.

Respectfully submitted.

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Attorneys.

FEBRUARY, 1930.

APPENDIX

STATUTES INVOLVED

The War Risk Insurance Act of October 6, 1917, in Section 400, 40 Stat. 409, provided for the issuance by the Government of policies of war risk life insurance, and Section 405 of the Act, 40 Stat. 410, (U. S. C., Title 38, Sec. 445), made provision for suit against the Government in the event of disagreement as to a claim under a contract of insurance between the Bureau of War Risk Insurance (Veterans' Bureau) and any person claiming thereunder. The same provisions were carried into the World War Veterans' Act of June 7, 1924, as Sections 300 and 19, respectively, c. 320, 43 Stat. 624, 612; U. S. C., Title 38, Secs. 511 and 445, and also into the Act of March 4, 1925, c. 553, Secs. 2, 12, 43 Stat. 1302, 1308. Sec. 19, as amended by the Acts of March 4, 1925, c. 553, Sec. 2, 43 Stat. 1302, and May 29, 1928, c. 875, Sec. 1, 45 Stat. 964, provides:

"In the event of disagreement as to claim under a contract of insurance between the Bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and de-

termine all such controversies. The procedure in such suits shall be the same as that provided in sections 5 and 6 of the Act entitled 'An Act to provide for the bringing of suits against the Government of the United States,' approved March 3, 1887, and section 10 thereof insofar as applicable. All persons having or claiming to have an interest in such insurance may be made parties to such suit, and such as are not inhabitants of or found within the district in which suit is brought may be brought in by order of the court to be served personally or by publication or in such other reasonable manner as the court may direct. In all cases where the bureau acknowledges the indebtedness of the United States upon any such contract of insurance and there is a dispute as to the person or persons entitled to payment, a suit in the nature of a bill of interpleader may be brought by the bureau in the name of the United States against all persons having or claiming to have any interest in such insurance in the Supreme Court of the District of Columbia or in the district court in and for the district in which any of such claimants reside: *Provided,* That not less than thirty days prior to instituting such suit the bureau shall mail a notice of such intention to each of the persons to be made parties to the suit. The circuit courts of appeal and the Court of Appeals of the District of Columbia shall respectively exercise appellate jurisdiction and, except as provided in sections 239 and 240 of the Judicial Code, the decrees of the circuit courts of appeal and the Court of Appeals of the District of Columbia shall be final. This section shall apply to all suits now pending against the United States under the provisions of the War Risk Insurance Act as amended, or of the World War Veterans' Act, 1924, and amendments thereto. (U. S. C., Title 38, Sec. 445.)

"No suit shall be allowed under this section unless the same shall have been brought within six

years after the right accrued for which the claim is made, or within one year from the date of the approval of this amendatory Act, whichever is the later date: *Provided,* That for the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded: *Provided further,* That this limitation is suspended for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director. Infants, insane persons, or persons under other legal disability, or persons rated as incompetent or insane by the bureau shall have three years in which to bring suit after the removal of their disabilities. If suit is seasonably begun and fails for defect in process, or for other reasons not affecting the merits, a new action, if one lies, may be brought within a year though the period of limitations has elapsed. Judgments heretofore rendered against the person or persons claiming under the contract of war-risk insurance on the ground that the claim was barred by the statute of limitations shall not be a bar to the institution of another suit on the same claim. No State or other statute of limitations shall be applicable to suits filed under this section. This section shall apply to all suits now pending against the United States under the provisions of this section." (U. S. C. Sup. III, Title 38, Sec. 445.)

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Nos. 463 and 548

In the Supreme Court of the United States

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v.

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THE UNITED STATES OF AMERICA

v.

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ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

APPENDIX TO BRIEFS FOR THE UNITED STATES

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ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

APPENDIX TO BRIEFS FOR THE UNITED STATES

[Treasury Department, Bureau of War-Risk Insurance, Division of Military and Naval Insurance, Bulletin No. 1]

TERMS AND CONDITIONS OF SOLDIERS' AND SAILORS' INSURANCE

I, William C. De Lanoy, Director of the Bureau of War-Risk Insurance in the Treasury Depart-

ment, pursuant to the provisions of section 402 of an act "to amend 'An act to authorize the establishment of a Bureau of War-Risk Insurance in the Treasury Department,' approved September 2, 1914, and for other purposes," approved October 6, 1917, hereby, on this 15th day of October, 1917, by direction of the Secretary of the Treasury, determine upon and publish these full and exact terms and conditions of the contract of insurance to be made under and by virtue of the act:

1. Insurance will be issued for any of the following aggregate amounts upon any one life:

Amount	Converted into monthly installments of—	Amount	Converted into monthly installments of—
$1,000	$5.75	$6,000	$34.50
$1,500	8.63	$6,500	37.38
$2,000	11.50	$7,000	40.25
$2,500	14.38	$7,500	43.13
$3,000	17.25	$8,000	46.00
$3,500	20.13	$8,500	48.88
$4,000	23.00	$9,000	51.75
$4,500	25.88	$9,500	54.63
$5,000	28.75	$10,000	57.50
$5,500	31.63		

Which installments will be payable during the total and permanent disability of the insured, or if death occur without such disability, for 240 months, or if death occur following such disability, for a sufficient number of months to make 240 in all including months of disability already paid for, in both cases except as otherwise provided.

2. The insurance is issued at monthly rates for the age (nearest birthday) of the insured when the insurance goes into effect, increasing annually upon the anniversary of the policy to the rate for an age one year higher, as per the following table of rates:

[Here follows a table of rates.]

Rates at ages higher or lower will be given on request.

The insurance may be continued at these increasing term rates during the war and for not longer than five years after the termination of the war, and may be continued thereafter without medical examination if the policy be converted into a form selected before the expiration of such five years by the insured from the forms of insurance which will be provided by the bureau, provided that premiums are paid therefor at net rates computed by the bureau according to the American Experience Table of Mortality and interest at 3½ per cent per annum.

3. That the insurance has been granted will be evidenced by a policy or policies issued by the bureau, which shall be in the following general form (which form may be changed by the bureau from time to time, provided that full and exact terms and conditions thereof shall not be altered thereby):

[Form of policy for $5,000]

MILITARY AND NAVAL INSURANCE POLICY

No. 1

Amount, $5,000 Age, 25
Monthly installments, $28.75

THE UNITED STATES OF AMERICA

TREASURY DEPARTMENT

BUREAU OF WAR-RISK INSURANCE

Under the authority granted by Congress in an act amending "An act entitled 'An act to authorize the establishment of a Bureau of War Risk Insurance in the Treasury Department,' approved

September 2, 1914, and for other purposes," approved October 6, 1917, and subject in all respects to the provisions of such act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with this policy, the application therefor, and the terms and conditions published under authority of the act, shall constitute the contract:

Hereby insures from and after the ------ day of ------, 19--, John Doe, of Illinois, private,
(Name, State of residence, and designation of the insured)
Company A, Third Infantry, conditioned upon the payment of premiums as herein provided for the principal amount of $5,000, converted into monthly installments of $28.75 (the equivalent, when paid for 240 months, of the sum insured, on the basis of interest at the rate of 3½ per cent per annum) payable—

To the insured, of he/she, while this insurance is in force, shall become totally and permanently disabled, commencing with such disability as established by the award of the director of the bureau and continuing during such disability; and

To the beneficiary or beneficiaries hereinafter designated, commencing upon the death of the insured, while the insurance is in force, and (except as otherwise provided) continuing for 240 months if no installments have been paid for total and permanent disability or, if any such installments have been paid, then for a number of months sufficient to make 240 in all:

To Sarah Doe, wife of the insured:

If no beneficiary within the permitted class be designated by the insured, either in the insured's lifetime or by his last will and testament, or if any

above-designated beneficiary is or becomes disqualified or does not survive the insured, the insurance (or if any above-designated beneficiary shall survive the insured, but shall not receive all the installments, then the remaining installments) shall be payable to such person or persons within the permitted class of beneficiaries as would under the laws of the insured's place of residence be entitled to his personal property in case of intestacy.

If the insured became totally and permanently disabled before this policy was applied for, it shall nevertheless be effective as life insurance, but not as insurance against such disability.

This policy is not assignable, and payments thereunder to the insured or a beneficiary are not subject to claims of creditors of the insured or beneficiary.

The insured may at any time, subject to the regulations of the bureau, change the beneficiary or beneficiaries to any person or persons within the classes permitted by the act, without the consent of the beneficiary or beneficiaries.

Upon the written request of the insured, accompanied by this policy for indorsement, or after his/her death, upon request of a beneficiary at the time of making claim, the insurance payable to any beneficiary may be converted into installments of reduced amounts payable for 240 months certain and for as much longer as such beneficiary shall survive, such installments to be computed in accordance with the American Experience Table of Mortality and 3½ per cent interest.

Premiums shall be paid monthly on or before the last day of each calendar month and will, unless the

insured otherwise elects in writing, be deducted from any pay due him/her from the United States or deposit by him/her with the United States, and, if so to be deducted a premium when due will be treated as paid, whether or not such deduction is in fact made, if upon the due date the United States owe him/her on account of pay or deposit an amount sufficient to provide the premium, provided that the premium may be paid within 31 days after the expiration of the month, during which period of grace the insurance shall remain in full force. If any premium be not paid, either in cash or by deduction as herein provided, when due or within the days of grace, this insurance shall immediately terminate, but may be reinstated within six months upon compliance with the terms and conditions specified in the regulations of the bureau.

If the age of the insured has been misstated, the amount of insurance shall be adjusted at the amount not in excess of $10,000 which the premium actually paid would purchase at the insured's attained age.

During the present war and for not more than five years thereafter, or until the earlier conversion of this policy, as hereinafter provided, the monthly premiums shall be in accordance with the following table of rates, increasing at each anniversary of the policy to the rate for his/her then attained age:

Table of premiums for $5,000

[Ages 15 to 65]

Attained age	Monthly rate	Attained age	Monthly rate
15	$3.15	41	$4.10
16	3.15	42	4.20
17	3.15	43	4.33
18	3.20	44	4.45
19	3.25	45	4.60
20	3.25	46	4.75
21	3.25	47	4.95
22	3.25	48	5.15
23	3.25	49	5.40
24	3.30	50	5.70
25	3.30	51	6.00
26	3.35	52	6.35
27	3.35	53	6.75
28	3.40	54	7.20
29	3.45	55	7.65
30	3.45	56	8.20
31	3.50	57	8.80
32	3.55	58	9.50
33	3.60	59	10.25
34	3.65	60	11.05
35	3.70	61	12.00
36	3.75	62	13.00
37	3.80	63	14.10
38	3.85	64	15.35
39	3.95	65	16.75
40	4.05		

Not later than five years after the war this policy, if written request be made to the bureau therefor, accompanied by this policy, will be converted without medical examination into any form of insurance selected from among those that may be prescribed by regulations of the bureau. Such converted insurance will be at net premiums, computed in accordance with the American Experience Table of Mortality and 3½ per cent interest per annum and will provide for cash, loan, paid-up, and extended insurance values.

Wherefore the United States of America has caused this policy to be signed by the Secretary of

the Treasury and by William C. De Lanoy, the Director of the Bureau of War-Risk Insurance, and countersigned by the registrar or an assistant registrar of the bureau.

W. G. McAdoo,
Secretary of the Treasury.

William C. De Lanoy,
Director of the Bureau of War-Risk Insurance.

Countersigned at Washington, D. C., this------ day of ------, 19--.

------ ------,
Registrar.

4. Persons entitled to apply for this insurance are—

(1) A commissioned officer (including a warrant officer) in active service in the military or naval forces of the United States.

(2) Any person, male or female, enlisted, enrolled, or drafted into active service in the military or naval forces of the United States, including noncommissioned and petty officers and members of training camps authorized by law.

The term " military or naval forces " means the Army, the Navy, the Marine Corps, the Coast Guard, the Naval Reserves, the National Naval Volunteers, and any other branch of the United States service while serving pursuant to law with the Army or the Navy.

(3) Any member of the Army Nurse Corps (female) or of the Navy Nurse Corps (female) while employed in active service under the War Department or Navy Department, respectively.

5. Insurance may be applied for in favor of one or more of the following persons with sum of $500 or a multiple thereof for each beneficiary, the aggregate not exceeding the limit of $10,000 and not less than $1,000 upon any one life:

Husband or wife.

Child, including legitimate child; child legally adopted before April 6, 1917, or more than six months before enlistment or entrance into or employment in active service, whichever date is the later; stepchild, if a member of the insured's household; illegitimate child, but, if the insured is his father, only if acknowledged by instrument in writing signed by him, or if he has been judicially ordered or decreed to contribute to such child's support, and if such child, if born after December 31, 1917, shall have been born in the United States or in its insular possessions.

Grandchild, meaning a child, as above defined, of a child as above defined.

Parent, including father, mother, grandfather, grandmother, stepfather, and stepmother, either of the insured or of his/her spouse.

Brother or sister, including of the half blood as well as of the whole blood, stepbrothers and stepsisters and brothers and sisters through adoption.

Unless other designation is made by the insured, such person or persons, within the permitted class of beneficiaries, as would under the laws of the place of residence of the insured be entitled to his personal property in case of intestacy shall be deemed designated as the beneficiary or beneficiaries to whom shall be paid any installments remaining unpaid upon the death, or disqualification

under the provisions of the act, of any named beneficiary.

In case the applicant does not desire the premium to be deducted from his/her pay (or his/her deposit) he/she should so elect in writing at the time of making application; but if no election is made it shall have the effect to provide for such deduction from his/her pay, or if such pay be insufficient, any balance from his/her deposit.

7. Applications for insurance are to be made upon the blanks provided by the bureau, but any writing sufficiently identifying the applicant and specifying the amount of insurance shall be deemed sufficient. Upon request of the bureau, however, the applicant shall fill out and sign the proper blank as of the original date.

8. If a signed writing requesting insurance for less than $4,500 is mailed or delivered before the 12th day of February, 1918, to the Bureau of War-Risk Insurance, Washington, D. C., or to any branch thereof or to any officer of the United States authorized to receive the same, such insurance, in the absence of other specification in such writing, shall be and be deemed applied for and the contract made on such 12th day of February, 1918, the provisions of section 401 as to automatic insurance meanwhile continuing in full force; if so mailed or delivered on or after such day, or if for $4,500 or more, though mailed or delivered before such day, the insurance shall, in the absence of other specification in such writing, be and be deemed applied for and the contract made on the day of mailing or delivery.

9. These terms and conditions are subject in all respects to the provisions of such act and of any amendments thereto and of all regulations thereunder now in force or hereafter adopted.

WILLIAM C. DE LANOY,
Director of the Bureau of War-Risk Insurance.

WASHINGTON, D. C.
October 15, 1917.

The Act of October 6, 1917 (c. 105, 40 Stat. 398, 409, 410), provides in part as follows:

SEC. 402. That the director, subject to the general direction of the Secretary of the Treasury, shall promptly determine upon and publish the full and exact terms and conditions of such contract of insurance. The insurance shall not be assignable, and shall not be subject to the claims of creditors of the insured or of the beneficiary. It shall be payable only to a spouse, child, grandchild, parent, brother or sister, and also during total and permanent disability to the injured person, or to any or all of them. The insurance shall be payable in two hundred and forty equal monthly installments. Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for cash, loan, paid-up and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable may be provided for in the contract of insurance or from time to time by regulations. All calculations shall be based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum, except that no deduction shall be made for continuous installments during the life of the in-

sured in case his total and permanent disability continues more than two hundred and forty months. * * *

* * * * *

SEC. 403. That the United States shall bear the expenses of administration and the excess mortality and disability cost resulting from the hazards of war. The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at three and one-half per centum per annum.

SEC. 404. That during the period of war and thereafter until converted the insurance shall be term insurance for successive terms of one year each. Not later than five years after the date of the termination of the war as declared by proclamation of the President of the United States, the term insurance shall be converted, without medical examination, into such form or forms of insurance as may be prescribed by regulations and as the insured may request. Regulations shall provide for the right to convert into ordinary life, twenty-payment life, endowment maturing at age sixty-two, and into other usual forms of insurance and shall prescribe the time and method of payment of the premiums thereon, but payments of premiums in advance shall not be required for periods of more than one month each and may be deducted from the pay or deposit of the insured or be otherwise made at his election.

Section 17 of the Act of March 4, 1925 (c. 553, 43 Stat. 1302, 1311), provides in part as follows:

* * * wherever a judgment or decree shall be rendered in an action brought pursuant to section 19 of Title I of this Act the court, as a part of its

judgment or decree, shall determine and allow reasonable fees for the attorneys of the successful party or parties and apportion same if proper, said fees not to exceed 10 per centum of the amount recovered and to be paid by the bureau out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth of each of such payments until paid.

APPROPRIATIONS

The following appropriations were made solely for the payment of benefits under yearly term war-risk life insurance accruing for the year in which the appropriation was made:

By Act of Oct. 6, 1917 (40 Stat. 398, 400)	$23,000,000
By Act of Feb. 13, 1923 (42 Stat. 1227, 1244)	90,000,000
By Act of Mar. 4, 1923 (42 Stat. 1527, 1530)	13,235,000
By Act of June 7, 1924 (43 Stat. 521, 533)	88,000,000
By Act of Mar. 3, 1925 (43 Stat. 1198, 1212)	98,000,000
By Act of Mar. 3, 1926 (44 Stat. 161, 165)	27,000,000
By Act of Apr. 22, 1926 (44 Stat. 305, 320)	123,000,000
By Act of Feb. 11, 1927 (44 Stat. 1069, 1085)	114,000,000
By Act of Dec. 22, 1927 (45 Stat. 2, 7)	8,920,000
By Act of May 16, 1928 (45 Stat. 573, 588)	106,750,000
By Act of Feb. 20, 1929 (45 Stat. 1230, 1247)	115,250,000
By Act of Mar. 4, 1929 (45 Stat. 1623, 1628)	7,500,000
Total	814,655,000

Benefits under the yearly term policies will continue for many years, but there will be little income, as the Annual Report of the Director of the Veterans' Bureau for 1929 (p. 22) shows that on June 30, 1929, only 226 such policies were then in force.

Respectfully submitted.

WILLIAM D. MITCHELL,
Attorney General.

CLAUDE R. BRANCH,
Special Assistant to the Attorney General.

MARCH, 1930.

U. S. GOVERNMENT PRINTING OFFICE: 1930

FILE COPY

FEB

CHARLES E.

In the
Supreme Court of the United States

OCTOBER TERM, 1929

No. 548

THE UNITED STATES OF AMERICA

v.

MATTIE PUCKETT WORLEY, ADMINISTRATRIX OF THE ESTATE OF EMMET A. PUCKETT, DECEASED, AND MATTIE PUCKETT WORLEY, INTERVENER.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR MATTIE PUCKETT WORLEY, ADMINISTRATRIX, ET AL.

CLARENCE T. SPIER,

CHARLES BATTELLE,

Attorneys for Plaintiff and Intervener.

COCKLE PRINTING CO., OMAHA

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MATTIE PUCKETT WORLEY, ADMINISTRATRIX OF THE ESTATE OF EMMET A. PUCKETT, DECEASED, AND MATTIE PUCKETT WORLEY, INTERVENER.

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR MATTIE PUCKETT WORLEY, ADMINISTRATRIX, ET AL.

STATEMENT OF THE CASE

This case is before the Court on certificate from the United States Circuit Court of Appeals for the Eighth Circuit. The cause of action is one arising on a policy of war risk insurance originating, and tried by a jury, in the District Court of the United States, Nebraska Division. From a judgment in the District Court in favor of the plaintiff, the United States, defendant, prosecuted

an appeal to the Circuit Court of Appeals which court has duly certified to this court four questions of law predicated upon a statement of the case and recited in Pages 1 to 4 of the certificate. Briefly summarized the facts set forth therein (R. 1-4) are as follows:

The assured, Emmet A. Puckett, was duly enlisted in the army of the United States and served therein until discharged on May 18, 1918. While in such service he procured a war risk insurance contract in the sum of $10,000.00 pursuant to the act of October 6, 1917 (40 Stat. 398). This contract provided for the payment of $57.50 to the beneficiary thereof in the event of death or to the insured upon total and permanent disability during the existence of the contract. Claim was duly presented to the Veterans' Bureau for and on behalf of the insured during his lifetime, this claim being rejected by the Bureau on December 29, 1926. The insured veteran died on January 7, 1927. Thereafter on April 23, 1927, Mattie Puckett Worley, as administratrix brought suit to recover on the contract of insurance pursuant to the provisions of Section 19 of the World War Veterans' Act (U. S. C. Title 38, Sec. 445, 45 Stat. 964) seeking to recover, on the ground of permanent and total disability of the insured from the date of his discharge from the military service, insurance payments due under said contract from the date of discharge, March 18, 1918, to January 7, 1927, the date of the soldier's death. (R. 2). Thereafter on July 6, 1927, Mattie Puckett Worley, as beneficiary, in compliance with an order of court duly made upon motion of the United States, filed her petition of intervention in which, as beneficiary, she claimed

any balance due her as such under said insurance contract. (R. 2). The action was duly tried and the jury returned a verdict in favor of the administratrix in the sum of $6095.00, being the amount due by reason of the monthly payments to the date of the death of the insured and a verdict in favor of the intervening beneficiary designated in the policy for $3905.00. The District Court entered judgment for the above amounts. Subsequently, on December 28, 1928, the District Court entered a supplemental judgment wherein interest, at the rate of 7% per annum was allowed to the plaintiff in the sum of $2655.99; to the intervener interest at the rate of 7% per annum on unpaid payments due her to October 31, 1928, (being the date of the rendition of the original judgment), in the sum of $84.36. The supplemental judgment further providing that thereafter the balance due her as beneficiary be paid at the rate of $57.50 per month, with interest on the judgment at the same rate, and costs. (R. 2-3).

The United States appealed to the Circuit Court of Appeals for the Eighth Circuit.

———o———

QUESTIONS CERTIFIED

The questions presented as stated in the certificate are as follows:

I.

Upon the facts stated does the United States as a matter of law stand in the position of one who has gone into the business of insurance and must, therefore, be assumed to have accepted the ordinary incidents of suit in such business?

II.

In case of a finding in favor of plaintiff and intervener may judgment be entered against the United States for amounts of insurance installments maturing after the action was instituted?

III.

In case of a finding and judgment in favor of the plaintiff and intervener is interest allowable against the United States upon the monthly installments from the date they are found to be due?

IV.

In case of a finding and judgment in favor of plaintiff and intervener may costs be awarded generally against the United States upon condition that they be paid from accumulated funds in the hands of the Veterans' Bureau, if any, available for that purpose?

———o———

BRIEF OF THE ARGUMENT

I.

With reference to the first questions certified, it is our contention that the United States stands in the position of one who has gone into the business of insurance and, therefore, must be assumed to have accepted the ordinary incidents of suit in such business.

Act of September 2, 1914, 38 Stat. 711.

Act of October 6, 1917, 40 Stat. 398.

Standard Oil Company of New Jersey vs. United States, 267 U. S. 76, 45 S. Ct. 211.

II.

Judgment may be entered against the United States for the amounts of insurance installments maturing after the action was instituted. The rights of all parties to the insurance contract were definitely settled and the contract itself matured with the death of the assured.

Cumings vs. United States, 34 Fed. 2nd 384 (D. C.).

The stated beneficiary of the policy was entitled to and she received judgment for the balance due thereunder. Section 19 of the World War Veterans' Act (U. S. C. Title 38, Sec. 445) provides:

> "All persons having or claiming to have an interest in such insurance may be made parties to such suit."

The United States by motion which was duly sustained by the Court required the beneficiary to intervene and become a party to the action that her rights might be adjudicated. It is our contention that this having been done the United States cannot complain of the adjudication they sought and required. The supplemental judgment complained of, in so far as it pertained to the payment of future installments, imposed no obligation upon the United States in excess of the obligation incurred by the insurance contract and specifically set forth that payments in the future should be made in the manner and on the terms set forth in said contract. (R. 3).

III.

Interest is allowable against the United States upon all monthly installments from the date they are found to be due until paid. This Court has heretofore passed upon the question of the allowance of interest on war risk insurance and has answered affirmatively the question herein propounded.

Standard Oil Company of New Jersey vs. United States, 267 U. S. 76, 45 S. Ct. 211.

The Bureau of War Risk Insurance was authorized by the Act of September 2, 1914, (38 St. 711) to insure marine risks against the hazards of war. This act was amended by the Act of October 6, 1917 (40 St. 409) to provide for the granting of life and disability insurance to those in the military service of the United States, then a combatant nation. The statutory provisions authorizing and stipulating the forms of both marine and life insurance are similar in form and parallel in import; create and provide for a varied activity in the field of insurance, and create identical rights and liabilities thereunder.

Standard Oil Company vs. United States, supra.

Gianakouras vs. United States (D. C.), 33 Fed. 2nd 936.

The United States by particular legislation became engaged in the business of insuring various risks from the hazards of war. Interest should be allowed upon all claims for insurance arising under and by virtue of the business entered into, free from any discrimination, distinction and differentiation, not particularly stated by

statute, between hazards protected by such duly authorized insurance contracts.

The monthly installments due under the contract, and unpaid, constituted a definite debt of the United States particularly established as such by statute. Failure to pay these installments as and when due constituted a detention of money for which the plaintiff is entitled to complete remuneration equal to the value of the money so retained as of the date when eventually paid.

United States vs. The Thekla, 266 U. S. 328.

United States vs. The Neustra Senora, 108 U. S. 92.

The Pacquette Habana, 189 U. S. 453.

IV.

The costs may be awarded generally against the United States upon condition that they be paid from accumulated funds in the hands of the Veterans' Bureau available for that purpose.

44 Stat. Sec. 870, Page 495 provides

"In case of an adverse decision such costs as by law are taxable against the United States or against the party acting by direction as aforesaid shall be paid out of the contingent fund of the department under whose directions the proceedings were instituted."

State Bank vs. U. S. 16 Fed. 2nd. 439 (C. C. A. 6th) Certiorari denied, 274 U. S. 737.

ARGUMENT

I.

The United States as a matter of law stands in the position of one who has gone into the business of insurance and must, therefore, be assumed to have accepted the ordinary incident of suit in such business.

It has been pointed out that this question is argumentative and does not present a pure question of law requiring an answer by this Court. We contend that this question is of the utmost importance in establishing the relationship between the United States and those asserting rights under and by reason of war risk insurance contracts. The legal status of the United States with reference to the question can be clearly defined from and by an analysis of the legislative enactments creating and authorizing the machinery necessary and incident to the transaction of all matters incident to the proper protection of the risks contemplated and stipulated in the legislation itself.

The Bureau of War Risk Insurance was created by legislative enactment, the original act being of September 2, 1914, (38 Stat. 711) and pertained only to the insurance of marine risks being designed for the protection of American shipping from the hazards of the European war. The scope of the Bureau's activity was subsequently enlarged after the entry of the United States into the war and by congressional enactment of October 6, 1917, (40 Stat. 409) insurance on those in the military service of the United States was authorized contemplating the hazards of death and total and permanent disability. This legislation was in the form of an amendment to the original act and was a part thereof, merely enlarging the

activity of such institution which had already been created. Section 402 of Article 4, Act as amended October 6th, provides generally as to the form of the life and disability policy to be issued; states how any accruing loss shall be paid; provides for loan values, dividends, etc., uses the terms "to the assured and the beneficiaries"; and further provides, "all calculations shall be based upon the American Experience Table of Mortality and interest at 3½ per centum per annum." Section 404 of the same act provides for the duration or the continuation of what is designated as term insurance and figures the date in the future upon which all term insurance shall be converted into such usual forms of insurance as may be provided. A study of the original act as amended disclosed the free use of terms peculiar to the insurance business. The contract is freely called a contract of insurance. The assured is designated as such, as are the beneficiaries. The premium to be charged is so called and by very particular language is authorized to be fixed by actuarial deductions specifically based upon the American Experience Table of Mortality. Such briefly is the authority upon which the structure of war risk insurance was erected and we contend that a business was created to be operated as such, along the well recognized and accepted principles pertaining to the operation of a highly specialized business. We believe that it is pertinent to the question to point out to the Court the present day status of the United States Veterans' Bureau of which the department or Bureau of War Risk Insurance is now a part. The report to Congress of the United States Veterans' Bureau for the year ending June 30, 1929, discloses some facts which we consider have a bearing upon

the question here presented. Page 20 of this report states the following:

> "The insurance activities of a regional office are similar in many respects to those of a branch office of a commercial insurance company. This step in the Bureau's program of cooperation and service has made possible closer connection with the government life insurance policy holders and will enable the Bureau to conduct its insurance business with a standard of service comparable to that of the leading life insurance companies."

Plaintiff and intervener cannot concur in the statement that *White vs. United States*, 270 U. S. 175, asks the question as to whether or not the United States entered the insurance business in the negative. The *White* case, we believe, went no further than to hold that the contract of insurance was subject to change as between the original parties thereto and, therefore, that a volunteer with rights thereunder could not object when and in the event such changes were made. It is submitted that as a matter of law the United States entered the business of insurance and that any incidents thereto not particularly excepted can be, as a matter of law, deemed to have been assumed and the United States by reason thereof placed in the position of any other litigant engaged in such business.

II.

In case of a finding in favor of plaintiff and intervener judgment may be entered against the United States for the amounts of insurance installments maturing after the action was instituted.

This action was a suit on a contract of war risk life insurance authorized by Section 19 of the World War

Veterans' Act, (U. S. C. Title 38, Sec. 455) and was instituted by the plaintiff, as administratrix, seeking to recover insurance payments alleged to be due from April 1, 1918, to and including January 1, 1927. Section 19 provides:

> "All persons having or claiming to have an interest in such insurance may be made parties to such suit, etc."

The question of future installments and a judgment therefor would not have been presented in the action, as originally brought, had not the United States moved the Court to require the beneficiary to intervene in the action that her rights might be adjudicated therein (R. 2). This motion was sustained and the petition of intervention filed with the result heretofore stated. It would appear that in as much as the statute provides that all persons having or claiming an interest in the insurance may be made a party to the action, that in the event those parties in interest were brought before the Court, the Court would have jurisdiction to adjudicate the rights of any and all such claimants as those rights should appear. This would seem to be particularly true in the instant case for the added reason that the United States, who now complains of this adjudication, was entirely responsible for the presentation of the question to the Court in the first instance and is therefore placed in the position of having by affirmative action required the Court to establish rights which when thus established are complained of on the grounds that the Court was without authority to so act. We submit that *United States vs. Napoleon*, 296 Fed. 811; *United States vs. Jackson*, 34

Fed. 2nd 241; *United States vs. Lyke,* 19 Fed. 2nd. 876, are distinguishable from the instant case for the reason that the original plaintiffs were seeking the establishment of personal rights in insurance contracts which might accrue to them after the original action was brought and for the further reason that in the Lyke and Jackson cases claimants were in life and their status with reference to the insurance contract subject to change in the future.

The rights of all the parties to the insurance contract were definitely settled by, and the contract itself matured with, the death of the assured.

Cumings vs. United States, 34 Fed. 2nd, 284.

The liability of the United States was definitely established. The supplemental judgment with reference to the payments due in the future did not in any way disregard or contravene the terms of the contract, nor did it prejudice the position or alter the liability of the United States with reference thereto. The supplemental judgment provided (R. 3) that payment of future monthly installments be made at the rate of $57.50 per month until the unpaid balance due upon the contract had been satisfied.

United States cannot complain of that which they by affirmative action are responsible for. No rule of law is violated by the judgment in reference to future installments in the instant case and the liability of the United States has in no way been affected by the action complained of.

III.

In case of a finding and judgment in favor of the plaintiff and intervener interest is allowable against the United States upon monthly installments from the date they are found to be due.

As stated by the Circuit Court of Appeals in the certificate (R. 4) there is no dispute with the rule announced by this court in the case of *Seaboard Air Line Ry. vs. United States,* 261 U. S. 299, and *Boston Sand and Gravel Co. vs. United States,* 278 U. S. 41. Clearly the claim for interest in the case at hand is founded on the contract of insurance. It can not be considered, solely, as falling within a stated exception to the above rule, but must also be considered in the light of the legal status of the contract and the liabilities created thereunder.

Interest has been allowed against the United States in cases of condemnation of property under the theory of "just compensation" as expressed in the 5th Amendment.

Seaboard Air Line vs. United States, 261 U. S. 299.

Rogers vs. United States, 246 U. S. 338.

Phelps vs. United States, 274 U. S. 341.

Monongahela Navigation Co. vs. United States, 148 U. S. 312.

Likewise in cases wherein interest has been considered as an element of damages due by reason of seizure in admiralty, marine collision and the retention of money or property.

United States vs. The Neustra Senora, 108 U. S. 92.

The Paquette Habana, 189 U. S. 453.
United States vs. The Thekla, 266 U. S. 328.
United States vs. McKee, 91 U. S. 442.
United States vs. North Carolina, 136 U. S. 211.

That interest can ever be allowed against the United States is therefore settled as a matter of law in the affirmative.

The unpaid installments constituted money detained by the United States; was a debt definitely established and therefore subject to interest for the time detained. In the case of United States vs. North Carolina, 136 U. S. 211, this Court stated:

> "Interest when not stipulated for by contract or authorized by statute is allowed by the Courts as damages for the detention of money or property or of compensation to which the plaintiff is entitled."

In the case of *Boston Sand and Gravel Co. vs. United States,* 278 U. S. 41, this Court, distinguishing between pure damages resulting from a collision and interest on those damages, announced the above rule, with which there is no dispute, and which is familar to this Court. The Court also stated in this case that interest was not an element of damages and said further:

> "It might be in case of the detention of money. But this is not a claim for the detention of money, nor can any money be said to have been detained."

The liability of the United States under the contract of insurance was clearly defined as to amount and manner of payment. The conditions upon which payment would be made were clearly expressed. Payments which

should have been made to the assured under the contract have been detained and used by the Veterans' Bureau. This Bureau has received an income from these funds by reason of investments made by the Bureau. The Report to Congress of the United States Veterans' Bureau for year ending June 30, 1929, discloses on Page 106, Table No. 61, the scope of the financial activities of the Insurance Division of the Bureau and the income derived from interest on bonds it owns. The Bureau is therefore placed in the position of refusing to allow interest upon funds detained by it and upon which it has received a return by way of interest.

With particular reference to the question of War Risk Insurance and the allowance of interest upon claims thereunder this Court has in the case of Standard Oil Company of New Jersey vs. United States, 267 U. S. 76, answered the question presented in the affirmative. We submit herein that the rule announced in that case is fairly applicable to the case here presented and that interest upon unpaid installments should be allowed. The rule has been applied in Gianakouras vs. United States, 33 Fed. 2nd 936 (D. C.) and a careful analysis made therein.

The *Standard Oil* case was based upon a claim arising under two contracts of insurance covering a marine risk and issued under the authority of the Act of September 2, 1914. This Court said:

> "When the United States went into the insurance business, issued policies in familiar form and provided that in case of disagreement it might me sued, it must be assumed to have accepted the ordinary incidents of suits in such business."

The statute being silent as to interest and no exception made with reference to it, therefore interest, as an ordinary incident of the business engaged in, and in suits pertaining thereto, should be allowed against the United States in the same measure and on the same theory as it would be in the case of a private litigant. When the United States is in the position of a private litigant by reason of its own conduct or by operation of law, it is subject to the same rules and conditions that would be common to and imposed upon such litigants.

Law vs. United States, 69 Sp. Ct. L. Ed. 401.

The question of interest is the heart of the matter before this Court, as it was in the Circuit Court of Appeals. It is the contention of the plaintiff and intervener that no reason in fact or in law exists creating a distinction between marine and human risks insured under the same Act against the hazards of war.

The Act of September 2, 1914, outlined the marine insurance business of the government and contemplated its operation agreeably to the dictates and business principles of regular commercial companies. It provided for the machinery necessary to carry out the stated purpose and provided that suits could be brought in the event of a disagreement, jurisdiction of which was conferred upon the United States District Court sitting in Admiralty (Sec. 5 Art I - 38 Stat. 711 9 Fed. St. Ann 1303). The Act neither by direct statement nor implication assumes the business to have been entered into for gain or profit, but rather contemplated a loss and provided that premiums, salvage, etc., be paid to the credit of the ap-

propriation made for the payment of losses. (Sec. 3 Art. I 38 Stat. 711-9 Fed. St. Ann. 1303).

The Act of October 6, 1917, amending the original act of September 2, 1914, enlarged the scope of the insurance activities to include those in the military service of the United States. With reference to war risk life and disability insurance the provisions were practically identical with those relating to marine insurance. The privilege of obtaining the insurance was granted; terms and conditions outlining and specifying liability thereunder were definitely established; it was declared to be a contract of insurance for which a premium was paid and it was specified that "All calculations shall be based upon the American Experience Table of Mortality" (Sec. 402 Art. IV, 9 Fed. Stat. Ann. 1326-40 Stat. 398). The provision as to suit in the event of disagreement was also made (43 Stat. 613). True no profit was contemplated from life and disability insurance nor was it in the case of marine insurance. A perusal of the Report of Director, United States Veterans' Bureau 1929, Table 61, P. 106, shows the life and disability insurance phase of the activities of the Bureau to be on a sound and desirable financial basis. We believe the question of the operation of either branch of the insurance business for gain is not material or relevant to the question raised here. Whether interest should be allowed on these contracts is a question going to the nature of the business itself and not determinable upon the result of the operation of that business with respect to profit and loss.

In *United States vs. Lyke,* 19 F 2nd 876, the Court followed the rule that no interest could be recovered against the United States in the absence of a stipulation

to pay it or a statute allowing same. In not following the *Standard Oil* case the Court stated that the reasoning therein did not apply; the contract of insurance was not a business contract but was one in the nature of insurance and pension.

The Act of October 6, 1917, was enacted in three Articles amending the Act of September 2, 1914, which was known as Article I. As stated in the Amending Act, Article II dealt with Allotments, and Family Allowance of those in military service; Article III pertained to and established compensation for death and disability incurred in line of military duty; Article IV enlarged upon Article I and provided for war risk life and disability insurance for the added protection of the insured and his dependents, in addition to compensation as already provided for in the preceding article. If the term "pension" can be used at all we submit it should be used with reference to compensation and not insurance. Compensation was a gratuitous benefit conferred without cost to those in service and easily distinguished from insurance for which a premium was paid for the benefit conferred.

In the case of *United States vs. Jackson,* 34 Fed. 2nd 241, the Court followed the Lyke case, stating:

> "In the Standard Oil Case the Supreme Court held that the United States had gone into the business of marine insurance and issued marine insurance policies in the usual form of such policies. On the contrary in issuing life and disability insurance policies under the provisions of the Amendment of October 6, 1917, the United States did not go into the life insurance business and did not issue life insurance policies in the usual form. Furthermore under such policies the payments to be made in case

of death or permanent disability were not indemnity in their entirety, but were partly in the nature of pension."

There is nothing extraordinary in life and disability term insurance. It is a very common form of insurance and the policy is in no sense unusual in form. We do not believe the Supreme Court in the *Standard Oil* case limited the holding to marine insurance—surely it did not in words as the Court said "went into the insurance business.'

We contend the distinctions drawn by the Courts in the Lyke and Jackson cases are fallacious and do not logically or in law exist. It is the business itself that is the test of liability in this matter and not the manner or form in which it is administered and its purpose effected.

In *State Bank & Trust Company vs. United States,* 16 Fed. 2nd 439 C. C. A. Certiorari denied in 274 U. S. 737, the Court said:

> "It is also urged that the insurance was a gratuity by the Government and hence that its limitations as indicated by the statute should be more strictly enforced, and with the minimum of regard for the soldier's interest. This claim does not impress us as justifying any peculiar rules of construction. These policies were gratuitous only in that they exacted a smaller cash premium than was required in standard policies; but this element of gratuity may well be considered to be compensation to the soldier in addition to the monthly cash payments for the services rendered and the risks incurred by him to or for the Government. We are inclined to approach the subject as we would any other between insurer and insured."

The installments unpaid constituted a debt of the United States and a liability thereunder for interest on money detained by the United States.

The business of insuring war risks as indulged in by the United States was strictly speaking the business of insurance, subjecting the insurer to all ordinary incidents of the business and suits relating thereto, unless specifically excepted by statute. Interest is one of these ordinary incidents. The status of those insured is equal and free from distinctions and discriminations in favor of one class and prejudicial to another. The rule announced in the case of *Standard Oil Company vs. United States* supra is comprehensive of the question here presented, is free from any ambiguity and succinctly states the law with reference to interest on war risk contracts. The distinctions created in the *Lyke* and *Jackson* cases are fallacious both as a matter of fact and a matter of law. We submit the rule of the *Standard Oil* case governs and should be applied.

IV.

In case of a finding and judgment in favor of plaintiff and intervener costs may be awarded generally against the United States, upon condition that they be paid from accumulated funds in the hands of the Veterans' Bureau, if any, available for that purpose:

Vol. 44, Part 1, Statutes at Large, Sec. 870, Page 945 is as follows:

> "Whenever a writ of error, appeal, or other process in law, admiralty, or equity, issues from or is brought up to the Supreme Court, or a circuit court of appeals, either by the United States or by direc-

tion of any department of the Government, no bond, obligation, or security shall be required from the United States, or from any party acting under the direction aforesaid, either to prosecute said suit, or to answer in damages or costs. In case of an adverse decision, such costs as by law are taxable against the United States, or against the party acting by direction as aforesaid, shall be paid out of the contingent fund of the department under whose directions the proceedings were instituted. (R. S. Sec. 1001; Mar. 3, 1911, c. 231, Secs. 118, 239, 36 Stat. 1131, 1167)."

In the case, *State Bank & Trust Company vs. United States*, 16 Fed. 2nd 439 (C. C. A.) the Court said:

"The Bureau has a fund from which not only the principal sum but in cases like this the costs could be properly paid and on that understanding full costs will be awarded."

Also Gianakouras vs. United States, 33 Fed. 2nd 936 (D. C.)

Luckenback vs. The Thekla, 45 S. C. 112.

Paquette Habana, 189 U. S. 453.

United States vs. The Neustra Senora, 108 U. S. 92.

—o—

CONCLUSION

It is respectfully submitted that the Questions Certified should be answered in the affirmative.

Respectfully submitted,

CLARENCE T. SPIER,

CHARLES BATTELLE,
Attorneys for Plaintiff and Intervener.

SUPREME COURT OF THE UNITED STATES.

No. 548.—October Term, 1929.

The United States of America, *vs.* Mattie Puckett Worley, Administratrix of the Estate of Emmet A. Puckett, Deceased, and Mattie Puckett Worley, Intervener.	On Certificate from the United States Circuit Court of Appeals for the Eighth Circuit.

[April 14, 1930.]

Mr. Justice Butler delivered the opinion of the Court.

The deceased enlisted in the army April 2, 1917, and was discharged March 18, 1918. He obtained insurance for $10,000 payable in the event of death or total permanent disability at the rate of $57.50 per month. Act of October 6, 1917, 40 Stat. 398, 409. The contract was in force when he was discharged. He presented to the Veterans' Bureau a claim for permanent total disability from that date. It was rejected December 29, 1926. He died January 7, 1927.

April 23, his mother as administratrix brought this action in the United States court for Nebraska to recover on account of his disability from the date of discharge to the time of his death. 38 U. S. C., § 445. July 6, she intervened as beneficiary to recover installments maturing after his death. There was a verdict on which, October 31, 1928, judgment was entered in her favor as administratrix for $6,095 and as beneficiary for $3,905. Later the District Court entered a supplemental judgment that as beneficiary she was then entitled to $1,265 on account of the installments falling due before the original judgment; that the balance, $2,640, should be paid at the rate of $57.50 per month commencing November 1, 1928; that she have interest on all installments from the dates on which they became due to the date of judgment and thereafter interest on the amount of the judgment, and that she recover costs. The United States appealed. The Circuit Court of Appeals certified the four questions which are given below. 28 U. S. C., § 346.

1. Upon the facts stated [in the certificate] does the United States, as matter of law, stand in the position of one who has gone into the business of insurance, and must, therefore, be assumed to have accepted the ordinary incidents of suits in such business?

Apparently, this question was suggested by language in our decision in *Standard Oil Co.* v. *United States,* 267 U. S. 76, 79. While the answer sought might aid in the determination of the proper application of that opinion, it is not necessary for the decision of the case. The question is one of objectionable generality. *United States* v. *Mayer,* 235 U. S. 55, 66. It need not be answered.

2. May judgment be entered against the United States for the amounts of insurance installments maturing after the action was instituted?

Undoubtedly, when one's right to recover is established by judgment, the Veterans' Bureau will pay him installments maturing in his favor after the commencement of the action. It therefore is a matter of no practical importance whether the installments maturing between date of intervention and entry of the judgment be included. But the certificate does not disclose any supplemental petition in respect of such installments, and the judgment should not include them. *Hamlin, Hale & Co.* v. *Race,* 78 Ill. 422. *Carter-Crume Co.* v. *Peurrung,* 99 Fed. 888, 890.

Section 514, Tit. 38, U. S. C.,* provides that if the designated beneficiary does not survive the insured or dies prior to receiving all of the 240 installments, or all such as are payable and applicable, the present value of the monthly installments thereafter payable shall be paid to the estate of the insured. A judgment for the designated beneficiary for all installments thereafter to mature would not protect the United States against a claim by the estate of the insured for any installments falling due after the death of the beneficiary. The judgment should not govern payment of installments later to mature.

The question should be answered in the negative.

3. Is interest allowable against the United States upon the monthly installments from the date they are found to be due?

The rule is that the United States will not be required to pay interest except where the liability is imposed by statute or assumed by contract. An implied agreement to pay interest arises upon a

*§ 303, Act of June 7, 1924, 43 Stat. 625 as amended by § 14, Act of March 4, 1925, 43 Stat. 1310.

taking by the United States of private property for public use where interest is an element in the just compensation guaranteed by the Constitution. *Seaboard Air Line Ry.* v. *United States,* 261 U. S. 299, 304. Where the United States came into admiralty to assert a claim as owner *pro hac vice* of a vessel it thereby agreed by implication to accept whatever decision the courts might make, and was held liable for interest. *United States* v. *The Thekla,* 266 U. S. 328, 339-340. And see *The Nuestra Senora de Regla,* 108 U. S. 92, 104. *The Paquete Habana,* 189 U. S. 453, 465, 467.

Appellee relies on *Standard Oil Co.* v. *United States, supra,* a libel on war risk insurance policies issued upon an American vessel and its cargo under the War Risk Insurance Act of September 2, 1914, 38 Stat. 711. The United States was held liable for interest upon the ground that (p. 79): "When the United States went into the insurance business, issued policies in familiar form and provided that in case of disagreement it might be sued, it must be assumed to have accepted the ordinary incidents of suits in such business. The policies promised that claims would be paid within thirty days after complete proofs of interest and loss . . . ."

The Act authorized the Bureau to adopt and publish forms of policies and to establish reasonable rates. The policies adopted by the Bureau and used in that case contained a promise to pay losses within a specified time. Under that form of contract private underwriters are liable for interest when payment is not made as agreed. There was nothing in the statute to disclose an intention on the part of the United States to bear any part of the cost of the insurance or to give pecuniary aid to the owners of vessels or other property insured. And as a matter of fact a large profit resulted from the operation of the business. Annual Report of the Director of the U. S. Veterans' Bureau, 1923, p. 675.

On the other hand, the Act of October 6, 1917, discloses a purpose on the part of the United States to protect those engaged in war service and their dependents and to contribute to their financial welfare. It provides for payment by the United States of family allowances in certain cases and of compensation for death or disability of officers, enlisted men and members of the army and navy nurse corps in active service resulting from injury or disease contracted in the line of duty. Arts. II and III.

And "in order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department greater

protection for themselves and their dependents than is provided in Article III" the United States provided life and disability insurance. Art. IV. Its benefits were extended without application therefor to those who were totally and permanently disabled or who died in active service after our entry into the war, April 6, 1917, and prior to the expiration of 120 days after the publication of the terms of the insurance. All such persons were deemed to have applied for and to have been granted insurance. § 401. The United States bore expenses of administration and excess mortality and disability cost resulting from the hazards of war. The insurance was limited to $10,000 and was made payable in 240 equal monthly installments; it was made not assignable nor subject to claims of creditors of the insured or of the beneficiary. The premiums were not adequate. The Congress intended that the United States should bear, and undoubtedly it has borne, a large part of the cost. Consequently the payments include both insurance and pension. *White* v. *United States,* 270 U. S. 175, 180.

The Act does not provide for the payment of any interest on past due installments. It has been uniformly construed by the Bureau not to allow any. There is nothing in the conduct of the United States in respect of life and disability insurance from which an agreement on its part to pay interest may reasonably be implied.

This question is not within the principle upon which interest was allowed in *Standard Oil Co.* v. *United States, supra.* It should be answered in the negative.

> 4. May costs be awarded generally against the United States, upon condition that they be paid from accumulated funds in the hands of the Veterans' Bureau, if any, available for that purpose?

The rule is that in the absence of a statute directly authorizing it courts will not give judgment against the United States for costs or expenses. *United States* v. *Chemical Foundation,* 272 U. S. 1, 20. There is no statute permitting costs to be awarded against the government in this case.

The question should be answered in the negative.

Question 1 is not answered.
Question 2 is answered: No.
Question 3 is answered: No.
Question 4 is answered: No.

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